

1 Saturday, 4 May, 1946
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7 INTERNATIONAL MILITARY TRIBUNAL
8 FOR THE FAR EAST
9 Court House of the Tribunal
10 War Ministry Building
11 Tokyo, Japan

12 The Tribunal met, pursuant to adjournment,

13 at 0930.

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15 Appearances:

16 For the Tribunal, same as before.

17 For the Prosecution Section, same as before.

18 For the Defense Section, same as before.

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20 (English to Japanese interpretation

21 was made by K. Hayashi of statements by the
22 President and of statements from the floor.)

23 MARSHAL OF THE COURT: The International
24 Military Tribunal for the Far East is in session and
25 is ready to hear any matter brought before it.

26 THE PRESIDENT: This morning, in Chambers, an
27 application was made to me in writing by the chief
28 counsel, Captain Coleman, appointed by the Allied
29 Powers, and by the counsel for the accused OKAWA,
30 namely, Mr. OHARA. The application was for the appoint-

1 ment of two psychiatrists - one to be appointed by the
2 prosecution and the other by Mr. OHARA on behalf of
3 the accused OKAWA - to examine the accused OKAWA to
4 ascertain whether he is mentally capable of pleading.

5 I made an order accordingly, but I intimated
6 that, if there was any disagreement between the two
7 psychiatrists, a third report would be obtained by
8 psychiatrists appointed by this Tribunal. Consequently,
9 on my order, I understand that Mr. OHARA will apply to
10 the Court to have the accused OKAWA removed from the
11 dock, in custody, for the purpose of examination.

12 MR. OHARA (Counsel for accused OKAWA): I am
13 defense counsel for OKAWA. I would like to have OKAWA
14 removed from this Court due to his physical condition.

15 THE PRESIDENT: Do you consent to the trial
16 proceeding in his absence?

17 MR. OHARA: Even after OKAWA has left this
18 Court, I would like to have this Court to continue.

19 THE PRESIDENT: I cannot hear a word.

20 (Whereupon, the official interpreter
21 repeated the last statement by Mr. OHARA.)

22 THE PRESIDENT: Repeat what he said, would
23 you, Ensign?

24 LANGUAGE SECTION CHIEF: Even though the
25 accused OKAWA leaves the Court, he would like to have

1 the proceedings continue.

2 THE PRESIDENT: Well, the Court orders that
3 the accused OKAWA be removed from the dock in custody
4 for the purpose of examination by the psychiatrists,
5 and that he return to the dock when the examination is
6 completed, if the Court is still in session.

7 MR. OHARA: I would also like to leave with
8 OKAWA.

9 THE PRESIDENT: I did not hear that.

10 LANGUAGE SECTION CHIEF: Counsel would also
11 like to leave with the accused OKAWA.

12 THE PRESIDENT: There is no reason why he
13 should not do so. But, I suggest that he ask another
14 counsel to watch the interests of the accused OKAWA in
15 his absence, although it is not likely that that counsel
16 will be asked to perform any duty.

17 Does he nominate some counsel to appear in
18 his absence?

19 MR. OHARA: I would like to have Dr. KIYOSE
20 to take care of matters.

21 THE PRESIDENT: Does the Doctor consent?

22 DR. KIYOSE (Counsel for accused TOJO): I
23 accept.

24 THE PRESIDENT: You may leave, Mr. OHARA.

25

(Whereupon, Mr. OHARA and the accused OKAWA withdrew from the courtroom.)

THE PRESIDENT: The Marshal of the Court will proceed with the reading of the Indictment.

(Whereupon, the reading of the Indictment was continued in English by the Marshal of the Court; and the prepared Japanese translation thereof was read by Mr. David Itami, official interpreter.)

10 | MARSHAL OF THE COURT: (Reading)

"COUNT 48.

12 "The Defendants HATA, KIDO, KOISO, SATO,
13 SHIGEMITSU, TOJO and UMEZU, prior to the 18th June,
14 1944, and on succeeding days, by unlawfully ordering,
15 causing and permitting the armed forces of Japan to
16 attack the City of Changsha in breach of the Treaty
17 Articles mentioned in Count 2 hereof and to slaughter
18 the inhabitants contrary to international law, unlaw-
19 fully killed and murdered many thousands of civilians
20 and disarmed soldiers of the Republic of China, whose
21 names and number are at present unknown.

"COUNT 49.

23 "The same Defendants as in Count 48, prior
24 to the 8th August, 1944, and on succeeding days, by
25 unlawfully ordering, causing and permitting the armed

1 forces of Japan to attack the City of Hengyang in the
2 Province of Hunan in breach of the Treaty Articles
3 mentioned in Count 2 hereof and to slaughter the in-
4 habitants contrary to international law, unlawfully
5 killed and murdered large numbers of civilians and
6 disarmed soldiers of the Republic of China, whose
7 names and number are at present unknown.

8 "COUNT 50.

9 "The same Defendants as in Count 48, prior
10 to the 10th November, 1944, and on succeeding days by
11 unlawfully ordering, causing and permitting the armed
12 forces of Japan to attack the Cities of Kweilin and
13 Liuchow in the Province of Kwangsi in breach of the
14 Treaty Articles mentioned in Count 2 hereof and to
15 slaughter the inhabitants contrary to international
16 law, unlawfully killed and murdered large numbers of
17 civilians and disarmed soldiers of the Republic of
18 China, whose names and number are at present unknown.

19 "COUNT 51.

20 "The Defendants ARAKI, DOHIHARA, HATA,
21 HIRANUMA, ITAGAKI, KIDO, KOISO, MATSUI, MATSUOKA, MUTO,
22 SUZUKI, TOGO, TOJO and UMEZU, by ordering, causing
23 and permitting the armed forces of Japan to attack
24 the territories of Mongolia and the Union of Soviet
25 Socialist Republics, with which nations Japan was then

1 at peace, in the region of the Khalkhin-Gol River in
2 the summer of 1939, unlawfully killed and murdered
3 certain members of the armed forces of Mongolia and
4 the Union of Soviet Socialist Republics, whose names
5 and number are at present unknown.

6 "COUNT 52.

7 "The Defendants ARAKI, DOHIHARA, HATA,
8 HIRANUMA, HIROTA, HOSHINO, ITAGAKI, KIDO, MATSUOKA,
9 MATSUI, SHIGEMITSU, SUZUKI and TOJO by ordering,
10 causing and permitting the armed forces of Japan to
11 attack the territory of the Union of Soviet Socialist
12 Republics, with which nation Japan was then at peace,
13 (in the region of Lake Khasan in the months of July
14 and August 1938) unlawfully killed and murdered certain
15 members of the armed forces of the Union of Soviet
16 Socialist Republics, whose names and number are at
17 present unknown."

18 (Whereupon, the reading of the
19 Indictment was continued in English by the
20 Acting Clerk of the Court; and the prepared
21 Japanese translation thereof was read by
22 Mr. Lanny Miyamoto.)

23 CLERK OF THE COURT: (Reading)

24 "GROUP THREE:

25 CONVENTIONAL WAR CRIMES AND CRIMES AGAINST HUMANITY.

1 "The following Counts charge conventional
2 "War Crimes and Crimes against Humanity, being acts for
3 which it is charged that the persons named and each of
4 them are individually responsible, in accordance with
5 Article 5 and particularly Article 5 (b) and (c) of
6 the Charter of the International Military Tribunal for
7 the Far East, and in accordance with International
8 Law, or either of them.

9 "COUNT 53.
10 "The Defendants, DOHIHARA, HATA, HOSHINO,
11 ITAGAKI, KAYA, KIDO, KIMURA, KOISO, MUTO, NAGANO, OKA,
12 OSHIMA, SATO, SHIGEMITSU, SHIMADA, SUZUKI, TOGO, TOJO
13 and UMEZU, together with divers other persons, between
14 the 7th December, 1941 and the 2nd September, 1945,
15 participated as leaders, organizers, instigators, or
16 accomplices in the formulation or execution of a com-
17 mon plan or conspiracy, and are responsible for all
18 acts performed by themselves or by any person in
19 execution of such plan.

20 "The object of such plan or conspiracy was
21 to order, authorize and permit the Commanders-in-Chief
22 of the several Japanese naval and military forces in
23 each of the several theatres of war in which Japan
24 was then engaged, and the officials of the Japanese
25 War Ministry, and the persons in charge of each of the

1 camps and labour units for prisoners of war and
2 civilian internees in territories of or occupied by
3 Japan and the military and civil police of Japan, and
4 their respective subordinates frequently and habitual-
5 ly to commit the breaches of the Laws and Customs of
6 War, as contained in and proved by the Conventions,
7 assurances and practices referred to in Appendix D,
8 against the armed forces of the countries hereinafter
9 named and against many thousands of prisoners of war
10 and civilians then in the power of Japan belonging
11 to the United States of America, the British Common-
12 wealth of Nations, the Republic of France, the Kingdom
13 of the Netherlands, the Commonwealth of the Philip-
14 pines, the Republic of China, the Republic of Portugal
15 and the Union of Soviet Socialist Republics, and that
16 the Government of Japan should abstain from taking
17 adequate steps in accordance with the said Conventions
18 and assurances and Laws and customs of War, in order
19 to secure observance and prevent breaches thereof.

20 "In the case of the Republic of China, the
21 said plan or conspiracy began on the 18th September,
22 1931, and the following Defendants participated there-
23 in in addition to those above-named: ARAKI, HASHIMOTO,
24 HIRANUMA, HIROTA, MATSUI, MATSUOKA, MINAMI.

25 "COUNT 54.

1 "The Defendants DOHIHARA, HATA, HOSHINO,
2 ITAGAKI, KAYA, KIDO, KIMURA, KOISO, MUTO, NAGANO,
3 OKA, OSHIMA, SATO, SHIGEMITSU, SHIMADA, SUZUKI, TOGO,
4 TOJO and UMEZU, between the 7th December, 1941 and the
5 2nd September, 1945, ordered, authorized and permitted
6 the same persons as mentioned in Count 53 to commit
7 the offenses therein mentioned and thereby violated
8 the laws of War.

9 "In the case of the Republic of China the
10 said orders, authorities and permissions were given in
11 a period beginning on the 18th September, 1931, and
12 the following Defendants were responsible for the
13 same in addition to those named above: ARAKI, HASHI-
14 MOTO, HIRANUMA, HIROTA, MATSUI, MATSUOKA, MINAMI.

15 "COUNT 55.

16 "The Defendants DOHIHARA, HATA, HOSHINO,
17 ITAGAKI, KAYA, KIDO, KIMURA, KOISO, MUTO, NAGANO, OKA,
18 OSHIMA, SATO, SHIGEMITSU, SHIMADA, SUZUKI, TOGO, TOJO
19 and UMEZU, between the 7th December, 1941 and the 2nd
20 September, 1945, being by virtue of their respective
21 offices responsible for securing the observance of the
22 said Conventions and assurances and the Laws and Cus-
23 toms of war in respect of the armed forces in the
24 countries hereinafter named and in respect of many
25 thousands of prisoners of war and civilians then in

1 the power of Japan belonging to the United States of
2 America, the British Commonwealth of Nations, the
3 Republic of France, the Kingdom of the Netherlands,
4 the Commonwealth of the Philippines, the Republic of
5 China, the Republic of Portugal and the Union of
6 Soviet Socialist Republics, deliberately and reck-
7 lessly disregarded their legal duty to take adequate
8 steps to secure the observance and prevent breaches
9 thereof, and thereby violated the laws of war.

10 "In the case of the Republic of China, the
11 said offense began on the 18th September, 1931, and
12 the following Defendants were responsible for the same
13 in addition to those named above: ARAKI, HASHIMOTO,
14 HIRANUMA, HIROTA, MATSUI, MATSUOKA, MINAMI.

15 "Wherefore, this Indictment is lodged with
16 the Tribunal, and the charges herein made against the
17 above-named Defendants are hereby presented to the
18 Tribunal.

19 "Joseph B. Keenan

20 Chief of Counsel, acting on behalf of
21 the United States of America.

22 "Hsiang Che-Chun

23 Associate Counsel, acting on behalf of
24 the Republic of China.
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"A. S. Comyns Carr

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Associate Counsel, acting on behalf
of the United Kingdom of Great Britain
and Northern Ireland.

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"S. A. Golunsky

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Associate Counsel, acting on behalf
of the Union of Soviet Socialist
Republies.

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"A. J. Mansfield

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Associate Counsel, acting on behalf
of the Commonwealth of Australia.

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"H. G. Nolan

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Associate Counsel, acting on behalf
of Canada.

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"Robert Oneto

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Associate Counsel, acting on behalf
of the Republic of France.

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"W. G. F. Borgerhoff Mulder

19

Associate Counsel, acting on behalf of
the Kingdom of the Netherlands.

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"R. H. Quilliam

22

Associate Counsel, acting on behalf of
New Zealand.

23

24

"p.p.Govinda Menon,
A.S. Comyns Carr

25

Associate Counsel, acting on behalf of
India.

1 "Pedro Lopez
2
3 Associate Counsel, acting on behalf
4 of the Commonwealth of the Philippines."
5
6 THE PRESIDENT: Do all the accused waive the
7 reading of the Appendices to the Indictment?
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9 CAPTAIN COLEMAN: If the Court please, we
10 request a ten-minute recess to determine that question.
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12 THE PRESIDENT: The Court may have a recess
13 of ten minutes.
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(Whereupon, at 1000, a recess
was taken until 1010, after which the pro-
ceedings were resumed as follows:)

1 CAPTAIN COLEMAN: If the Tribunal please,
2 the twenty-two defendants personally represented by
3 individual counsel have, through their counsel, waived
4 any further reading of the Indictment. The six defend-
5 ants not represented by individual Japanese counsel
6 have been questioned, and all six waive the reading of
7 the Appendices to the Indictment.

8 THE PRESIDENT: Will that be confirmed by
9 the Japanese counsel?

10 MR. KIYOSÉ: I, representing twenty-two
11 Japanese counsel, confirm.

12 THE PRESIDENT: I would like confirmation,
13 if I could get it, that the six accused who are not
14 represented by counsel also consent to the waiving of
15 the reading of the Appendices. Perhaps, the Japanese
16 counsel who spoke last can set our minds at rest on
17 that.

18 LANGUAGE SECTION CHIEF: Will the court
19 reporter on the rostrum please repeat the President's
20 statement?

21 (Whereupon, the official court
22 reporter read the statement by the President,
23 as requested.)

24 THE PRESIDENT: Apparently, the amplifiers
25 are not working.

1 MR. HOZUMI (Counsel for accused KIDO and TOGO)
2 I questioned the six defendants who are not represented
3 by Japanese defense counsel, and all of them waive the
4 reading of the Appendices of the Indictment.

5 THE PRESIDENT: The reading of the Appendices
6 to the record is waived.

7 MAJOR WARREN: If the Tribunal please, during
8 the reading of the Indictment, there were errors
9 noticed.

10 THE PRESIDENT: We order the defense and the
11 prosecution to meet to determine, if they can, what
12 corrections are necessary. If they cannot agree, the
13 Court will have to decide what corrections are neces-
14 sary with the assistance of the referees.

15 MAJOR WARREN: Sir, that was our suggestion.
16 Thank you.

17 (Interpretation from Japanese to
18 English and from English to Japanese was made
19 by the official interpreters, OKA, Takashi
20 and IWAMOTO, Nasahito, respectively.)

21 CAPTAIN COLEMAN: If the Tribunal please,
22 I would like to present to the Tribunal at this time
23 the situation relating to counsel for the defense.
24 Twenty-two of the defendants are individually repre-
25 sented by their personally chosen Japanese counsel.

1 THE PRESIDENT: I suggest that we take the
2 appearances of counsel for the defense at this stage
3 although, ordinarily, it would be taken at a later time.
4 So, I ask the counsel for the defendants - the Japanese
5 counsel - to announce their appearances, stating their
6 names and the accused whom they represent.

7 CAPTAIN COLEMAN: If the Tribunal please,
8 may Dr. KIYOSÉ, who is the spokesman for them, announce
9 them individually, giving the names of the Japanese
10 counsel and the accused whom each counsel represents,
11 and then have the counsel rise individually?

12 THE PRESIDENT: Well, they all appear to
13 hear him, and they can correct him if he does not state
14 their position accurately.

15 DR. KIYOSÉ: I, KIYOSÉ, represent Hideki
16 TOJO.

17 THE PRESIDENT: A Japanese defense counsel
18 has risen twice in his place. Apparently, he wishes
19 to make a statement.

20 (Whereupon, Dr. KIYOSÉ conferred
21 with the Japanese counsel above mentioned.)

22 DR. KIYOSÉ: He has nothing to say.

23 (Continuing) Mr. Goichiro FUJII represents
24 Naoki HOSHINO.

25 Mr. Shigetaka HOZUMI represents Marquis

- 1 Koichi KIDO and Shigenori TOGO.
2 Mr. Itsuro HAYASHI represents Kingoro
3 HASHIMOTO.
4 Mr. Rokuro USAMI represents Kiichiro HIRANUMA.
5 Mr. Masayoshi KANZAKI represents Shunroku
6 HATA.
7 Mr. Shunzo KOBAYASHI represents Yosuke
8 MATSUOKA.
9 Mr. Motokichi HASEGAWA represents Teiichi
10 SUZUKI.
11 Mr. Yutaka SUGAWARA represents Sadao ARAKI.
12 Mr. Shunzi SOMIYA represents Takasumi OKA.
13 Mr. Naoyoshi TSUKAZAKI represents Kenji
14 DOHIHARA and OSHIMA.
15 Mr. Tsuruo TAKANO represents Okinori KAYA.
16 Mr. Yoshitsugu TAKAHASHI represents SHIMADA.
17 Dr. Kintaro TAKEUCHI represents Jiro MINAMI.
18 Mr. Shoichi OKAMOTO represents Akira MUTO.
19 Dr. Somei UZAWA represents Iwane MATSUI and
20 Toshio SHIRATORI.
21 Mr. Hachiro OKUYAMA represents Osami NAGANO.
22 Mr. Shinichi OHARA represents Shumei OKAWA.
23 Mr. Shohei SAMMONZI represents Akira KOISO.
24 Mr. Tadashi HANAI represents Koki HIROTA.
25 That is all, sir. I must add one more:

1 Dr. Kenzo TAKAYANAGI represents Mamoru
2 SHIGEMITSU.

3 Thank you!

4 THE PRESIDENT: How many of the accused are
5 now represented by counsel, twenty-two or twenty-
6 three?

7 DR. KIYOSE: Twenty-three.

8 THE PRESIDENT: For the information of the
9 accused not represented by counsel, I read from
10 Article 9, paragraph c of the Charter. This Charter
11 was served on the accused. It reads,

12 "If an accused is not represented by counsel
13 and in open court requests the appointment of counsel,
14 the Tribunal shall designate counsel for him."

15 Do any of the accused desire the Tribunal
16 to nominate counsel for them?

17 (No answer)

18 In the absence of any request by accused for
19 counsel, the Tribunal may appoint counsel for them if,
20 in its judgment, such appointment is necessary for a
21 fair trial.

22 DR. KIYOSE: As a matter of fact, they have
23 counsel, but on signed paper, and have not signed power
24 of attorney.

25 THE PRESIDENT: Will someone tell me what he

1 said?

2 LANGUAGE SECTION CHIEF: If Dr. KIYOSÉ would
3 speak in Japanese, we can interpret it into English.

4 (Whereupon, Dr. KIYOSÉ continued
5 speaking in Japanese, interpretation into
6 English being made by the official interpreter.)

7 DR. KIYOSÉ: As a matter of fact, all the
8 defendants do have counsel; but, as there was very
9 little time, we were unable to take the necessary
10 steps.

11 THE PRESIDENT: That is contradictory. I do
12 not know what that means -- they have counsel, but they
13 have not had time to appoint counsel. Now, this Court
14 will appoint counsel for any of the accused who may
15 not have counsel because, in a case of this kind -- in
16 a trial of this dimension, we think it is necessary,
17 for the purpose of having a fair trial, that every
18 accused should be represented by counsel.

19 CAPTAIN COLEMAN: If the Tribunal please, the
20 counsel for only twenty-two accused have complied with
21 the Charter requirement that their names actually be
22 filed. We are now in the process of obtaining the
23 written designations and acceptances of counsel for
24 those to whom we now refer as being unrepresented by
25 counsel. We will, in a few days, have all the accused

represented by counsel whose names are on file with
the General Secretary.

THE PRESIDENT: Well, we will refrain from making any appointment in the hope that all the accused will be represented by counsel of their own choice on Monday morning.

CAPTAIN COLEMAN: If the Tribunal please, at this time, I would like to introduce the members of the American defense panel.

THE PRESIDENT: What standing have the American defense counsel until they are nominated by an accused? I think we will leave it at that, Captain.

Now, we ask the prosecution and defense to meet with a view towards correcting the Japanese translation of the Indictment. We do not propose, unless it is suggested from the Bar, to take any further steps in this proceeding today. There are important matters as to the Court's jurisdiction and, perhaps, as to the composition of the Tribunal itself which will possibly be the subject of motions and discussions later. We do not propose, however, to deal with those matters today.

The Court will now adjourn until thirty minutes past nine o'clock, Monday morning.

(Whereupon, at 1041, an adjournment was taken until Monday, 6 May, 1946 at 0930.)

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